



The State of New Hampshire  
*Department of Environmental Services*



Michael P. Nolin  
Commissioner

January 12, 2006

The Honorable Peter F. Bergin  
House Executive Departments and Administration Committee  
LOB 306  
Concord, NH 03301

Re: HB 1397, relative to prohibiting an agency from adopting rules over the objection of the joint legislative committee on administrative rules

Dear Representative Bergin and Members of the Committee:

Thank you for the opportunity to comment on HB 1397, relative to prohibiting an agency from adopting rules over the objection of the joint legislative committee on administrative rules. The Department of Environmental Services opposes this bill as being unnecessary.

Currently, an agency can proceed to adopt proposed rules if the Joint Legislative Committee on Administrative Rules ("JLCAR") enters a final objection. If this happens, the agency does not enjoy a "presumption of validity" if the rules are challenged in a court proceeding and so would bear the burden of proof to establish the validity of the rules. However, the JLCAR currently can prevent an agency from adopting the rules by voting to sponsor a joint resolution (ref. RSA 541-A:13, VII). HB 1397 proposes to change this so as to prohibit an agency from adopting rules if the JLCAR enters a final objection to the rules. If the end result of a final objection is the same as that of a joint resolution, there will be no way for the JLCAR to go on record as being concerned about a set of rules without blocking the rules completely -- thus eliminating a useful tool that currently is available to the JLCAR.

If you have any questions regarding this testimony, please contact Gretchen Hamel of my staff at 271-3137 or by e-mail at [ghamel@des.state.nh.us](mailto:ghamel@des.state.nh.us).

Sincerely,

  
Michael P. Nolin  
Commissioner

cc: Representative Richard Kennedy  
Representative Betsey Patten, Vice-Chair, JLCAR